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JONES, DAY, REAVIS & POGUE

METROPOLITAN SQUARE

1450 G STREET, N.W.

WASHINGTON D.C. 20005-2088

TELEPHONE 202-879-3939  
TELEX: DOMESTIC 892410  
TELEX: INTERNATIONAL 64363  
CABLE: ATTORNEYS WASHINGTON  
TELESCOPIER 202-466 8642  
WRITER'S DIRECT NUMBER:

AUSTIN HONG KONG  
CHICAGO LONDON  
CLEVELAND LOS ANGELES  
COLUMBUS NEW YORK  
DALLAS PARIS  
GENEVA RIYADH

August 24, 1987

Securities and Exchange Commission  
Office of Chief Counsel  
Division of Investment Management  
450 Fifth Street, N.W.  
Washington, D.C. 20549

PUBLIC AVAILABILITY DATE: 11-23-87  
ACT SECTION RULE  
1940C 17(f) 17f- 2

Attention: Angela Hall

Re: AmeriTrust's Collective Investment Retirement Fund

Dear Ms. Hall:

We are counsel to AmeriTrust's Collective Investment Retirement Fund (the "Fund"), a diversified, open-end investment company of the management type which is registered as such under the Investment Company Act of 1940, as amended (the "Act"). The Fund offers two Investment Portfolios for investment by Qualified Trusts, which include individual retirement trust accounts established under trust agreements with AmeriTrust Company National Association (the "Bank") as trustee, and pension or profit-sharing trusts benefiting one or more self-employed individuals (generally referred to as Keogh plans), established under trust agreements with the Bank as trustee.

This request for a no-action position by the Staff, which we are submitting at the request of the members of the Supervisory Committee, arises because of the custody arrangements for the assets of the Fund. Under the existing arrangements, the Bank, which serves as investment advisor to the Fund, will assume the safekeeping of certain of the Fund's assets. Pursuant to the Staff's current interpretative position, see Pegasus Income & Capital Fund, Inc., available December 31, 1977, the Bank's role as investment advisor would subject the Fund and its custody arrangements to the provisions of Rule 17f-2 under the Act. In light of the significant

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protections afforded by the custody procedures at the Bank, as hereinafter described, we believe the Staff should grant the limited no-action relief requested in this letter.

### Background

The Fund is a trust established under the laws of the State of Ohio by the Bank. The Bank, a commercial bank organized under the laws of the United States, serves as investment advisor to the Fund. In addition, the Bank, which satisfies the requirements for custodial banks set forth in Section 26 of the Act, serves as custodian of the Fund's assets pursuant to a management agreement between the Fund and the Bank. The majority of the assets of the Fund will be held pursuant to subcustodial arrangements approved by the Supervisory Committee with Depository Trust Company, the Federal Reserve Bank of Cleveland or agent banks, including U.S. Trust Company.

We are aware of several SEC no-action and interpretative letters which take the position that where the investment adviser of an investment company performs the custodial or safekeeping function, the investment company may be deemed to have custody of its own assets within the meaning of Rule 17f-2 so that compliance with that Rule would be required, see Pegasus Income & Capital Fund, Inc., available December 31, 1977, and IPI-Income and Price Index Fund, available December 12, 1980.

Rule 17f-2 specifies that: (1) the portfolio securities and similar investments of the Fund must be deposited in the safekeeping of a bank or other supervised company, (2) the securities of the Fund must be physically segregated and subject to limited rights of withdrawal, (3) access to the securities must be limited to a small number of duly authorized persons, and (4) deposits into and withdrawals from the custody account must be subject to detailed notational requirements with all such notations preserved for at least one year.

### Analysis - Bank Custody Procedures

We respectfully submit that the custody arrangements under which the assets of the Fund are held provide adequate protection for the Fund and its Unitholders, and therefore that strict compliance with Rule 17f-2 would be unduly burdensome to the Fund and unnecessary for the protection of its Unitholders.

All Fund investments maintained by the Bank (other than securities deposited with Depository Trust Company, the Federal Reserve Bank of Cleveland or short term securities held by an agent bank, including U.S. Trust Company, and securities

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excepted by paragraph (c) of Rule 17f-2) will be deposited for safekeeping in a vault maintained by the Bank, and the securities of the Fund will be physically segregated and identified at all times in compliance with Rule 17f-2. No member of the Supervisory Committee, officer or employee of the Fund will have access to any of the securities or other investments held by the Bank. Only properly authorized officers and employees of the Trust Securities Department will have access to such securities and investments.

Securities maintained at Depository Trust Company, the Federal Reserve Bank of Cleveland or short term securities held by agent banks are not subject to the physical control of the Bank, and are maintained in an account of Depository Trust, the Federal Reserve Bank of Cleveland or the agent bank which includes only assets held by the Bank for its customers. Instructions to Depository Trust, the Federal Reserve Bank of Cleveland or an agent bank with respect to such securities are delivered by personnel employed in the Investment Management Division of the Trust Department of the Bank and are subject to additional internal controls designed to prevent unauthorized instructions as required by Rule 17f-4. These controls include: (1) limitations on the number of persons authorized to transmit instructions to Depository Trust, the Federal Reserve Bank of Cleveland or an agent bank, (2) use of passwords to insure that only properly authorized persons can transmit instructions, (3) transmission by Depository Trust, the Federal Reserve Bank of Cleveland or an agent bank of confirmations of each transaction to persons at the Bank other than those who transmit the investment instructions, i.e., personnel employed by the Trust Support Division of the Trust Department of the Bank, and (4) internal accounting controls which subject all such confirmations from Depository Trust Company, the Federal Reserve Bank of Cleveland or an agent bank to daily proof against the transaction authorizations of the Bank. Confirmations of all transactions on behalf of the Fund in the Bank's account at Depository Trust, the Federal Reserve Bank of Cleveland or the agent banks are transmitted by Trust Support Division personnel to the advisory personnel who manage the Fund's investment operations and initiate those transactions.

We are of the opinion that the foregoing arrangements comply substantially with the requirements of paragraphs (a) through (e) of Rule 17f-2 and with the requirements of Rule 17f-4.

#### Request for No-Action Position

On the basis of the foregoing and at the request of the members of the Supervisory Committee of the Fund (who serve the

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same function as directors of a registered investment company), we would appreciate the confirmation of the Staff that it would not recommend any enforcement action if the assets of the Fund were maintained pursuant to the subcustodial arrangements described above and without compliance with the strict requirements of Rule 17f-2(e).

If you have any questions or wish any additional information, please contact the undersigned at (202) 879-3844.

Very truly yours

*Mary Ellen Seravalli*  
Mary Ellen Seravalli

cc: John C. Pollock, Esq.  
Ameritrust Company National Association  
David H. Gunning, Esq.  
Jones, Day, Reavis & Pogue

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**DIVISION OF INVESTMENT MANAGEMENT  
RESPONSE OF THE OFFICE OF CHIEF COUNSEL**

Our File No. 87-475-CC  
AmeriTrust's Collective  
Investment Retirement Fund  
File No. 811-4895

Your letter of August 24, 1987 requests our assurance that we would not recommend any enforcement action to the Commission under paragraph (e) of Rule 17f-2 under the Investment Company Act of 1940 ("1940 Act") 1/ if securities of AmeriTrust's Collective Investment Retirement Fund ("Fund") maintained with the Depository Trust Company, the Federal Reserve Bank of Cleveland and an agent bank ("Subcustodians"), pursuant to Rule 17f-4(d), 2/ are deposited and withdrawn in accordance with internal controls, 3/ in addition to those required by paragraph (d) of Rule 17f-4, 3/ rather than in compliance with the notational requirements of paragraph (e) of Rule 17f-2. Because the Fund's custodian, AmeriTrust Company National Association ("Bank"), also serves as the Fund's adviser, the Fund is deemed to be a self-custodian, requiring the Fund's compliance with Rule 17f-2. See Pegasus Income & Capital Fund, Inc. (pub. avail. Dec. 31, 1977). You argue that the internal controls provide adequate protection to the Fund and Unitholders since they are designed to prevent the same unauthorized instructions as paragraph (e) of Rule 17f-2. You ask for no-action relief only with respect to Fund assets maintained with the Subcustodians; you represent that the Fund will comply with every provision of Rule 17f-2, including paragraph (e), with respect to Fund securities maintained with the Bank itself.

We would not recommend any enforcement action to the Commission against the Fund or the Bank under paragraph (e) of Rule 17f-2 if Fund securities maintained

- 1/ Rule 17f-2 sets forth the conditions under which securities of a registered management investment company can be maintained in its custody. Paragraph (e) of the rule provides, in part, that every person depositing or withdrawing securities from a qualified depository or when ordering their withdrawal and delivery from the safekeeping of the bank, shall sign a notation, including (1) the date and time of each deposit, withdrawal, or order, (2) the title and amount of the securities deposited, withdrawn, or ordered and identification by certificate numbers or otherwise, (3) the manner of acquisition of the securities deposited, or the purpose for which they have been withdrawn, and (4) if withdrawn and delivered to another person the name of such person.
- 2/ Rule 17f-4(d) permits, under certain conditions, an investment company custodian to deposit securities in a clearing agency that acts as a securities depository as defined in paragraph (b) of the rule.
- 3/ Internal controls include (1) limitations on the number of persons authorized to transmit instructions to the Subcustodians, (2) use of passwords to insure that only properly authorized persons can transmit instructions, (3) transmission by Subcustodians of confirmations of each transaction to designated persons at the Bank, and (4) internal accounting controls that subject all confirmations from Subcustodians to daily proof against the transaction authorizations of the Bank ("Internal Controls").

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by the Subcustodians are deposited and withdrawn in accordance with the internal controls outlined in your letter. Our position is based on the representations contained in your letter and is applicable only to securities maintained with the Subcustodians and not to those assets maintained with the Bank. Because this position is based upon your representations, you should note that any different facts or conditions may require a different conclusion. Further, this response only expresses the Division's position on enforcement action and does not purport to express any legal or interpretive conclusions on the questions presented.

A handwritten signature in black ink, appearing to read "A. Thomas Smith III". The signature is fluid and cursive, with the first name "A." and last name "Smith" being the most legible parts.

A. Thomas Smith III  
Attorney